

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

AGUSTIN GARCIA,

Plaintiff,

v.

CORRECTIONAL MEDICAL SERVICE
INC., et al.,

Defendants.

Civil Action No. 23-2877 (BRM) (JSA)

MEMORANDUM AND ORDER

THIS MATTER is opened to the Court by *pro se* Plaintiff Agustin Garcia's ("Plaintiff"), a prisoner currently confined at East Jersey State Prison, in Rahway, New Jersey, Motion to Reopen (ECF No. 13) and proposed civil rights amended complaint ("Amended Complaint"), filed pursuant to 42 U.S.C. § 1983. (ECF No. 13.) Previously, this Court dismissed Plaintiff's initial complaint without prejudice for failure to state a claim upon which relief can be granted and provided him leave to file an amended complaint. (ECF No. 7.) Presently before the Court is Plaintiff's proposed Amended Complaint. (ECF No. 13.)

Federal law requires this Court to screen Plaintiff's Amended Complaint for *sua sponte* dismissal prior to service, and to dismiss any claim if the claim fails to state a claim upon which relief may be granted under Federal Rule of Civil Procedure 12(b)(6) and/or to dismiss any defendant who is immune from suit. *See* 28 U.S.C. § 1915(e)(2)(B).

The Court has screened the Amended Complaint in this action for dismissal and has determined that Plaintiff's Eighth Amendment deliberate indifference to Plaintiff's medical needs arising from the failure to diagnose and/or treat Plaintiff's testicular infection against Defendants Barrington Lynch, Swarnalatha Asokan, Debra Wamba, Ms. Hannah, Russell Freid, and Grace

Agbonito shall proceed. Plaintiff's Eighth Amendment deliberate indifference claims arising from the alleged unconsented removal of Plaintiff's testicle against Defendant Rehan Shah and Saint Francis Medical Center shall proceed. Additionally, Plaintiff's supervisor liability claims against Defendants Patrick Nogan and University Correctional Health ("UCH") arising from the alleged implementation and/or supervision of a medical provision system tailored to deny prisoners timely critically needed medical care based on the "availability of funds outside NJDOC, i.e., Medicare" shall proceed. However, Plaintiff's claims against Deep Trivedi are dismissed without prejudice for failure to allege specific facts to suggest their personal involvement in Plaintiff's medical treatment.¹ *See Rode*, 845 F.2d at 1207 ("A defendant in a civil rights action must have personal involvement in the alleged wrongs."). Plaintiff's state law claims of medical malpractice and negligence against all Defendants except Defendant Trivedi shall proceed at this time.

Accordingly, and for good cause appearing,

IT IS on this 8th day of January 2024,

ORDERED Plaintiff's Motion to Reopen (ECF No. 13) is **GRANTED**; it is further

ORDERED Plaintiff's claims against Defendant Lynch, Asokan, Wamba, Hannah, Freid, Agbonito, Shah, Nogan, and UCH shall **PROCEED** at this time; and it is further

ORDERED Plaintiff's claims against Defendant Trivedi are **DISMISSED without prejudice**; and it is further

ORDERED Ralph Woodward, Shella K. Mongia, Eric Osgood, Frank M. Fayz, University of Medicine & Dentistry of New Jersey, and Joseph Michelli shall be terminated on the docket, as the Amended Complaint fails to name these individuals as defendants; and it is further

¹ Plaintiff fails to mention Defendant Trivedi throughout the entirety of the Complaint other than to list them as a defendant.

ORDERED the Clerk shall mail to Plaintiff a transmittal letter explaining the procedure for completing United States Marshal (“Marshal”) 285 Forms (“USM-285 Forms”); and it is further

ORDERED once the Marshal receives the USM-285 Forms from Plaintiff and the Marshal so alerts the Clerk, the Clerk shall issue summons in connection with each USM-285 Form that has been submitted by Plaintiff, and the Marshal shall serve summons, the Complaint and this Order to the address specified on each USM-285 Form, with all costs of service advanced by the United States; and it is further

ORDERED Defendants shall file and serve a responsive pleading within the time specified by Federal Rule of Civil Procedure 12; and it is further

ORDERED the Clerk of the Court shall serve Plaintiff with copies of this Order via regular mail.

/s/*Brian R. Martinotti*
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE